

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF TEXAS  
MARSHALL DIVISION**

**U.S. SILICA COMPANY**

*Plaintiff,*

**v.**

**AMBERGER KAOLINWERKE  
EDUARD KICK GMBH & CO. KG,**

*Defendant.*

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**Case No. 2:20-cv-00298-JRG**

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**MINUTES FOR PRETRIAL CONFERENCE  
HELD BEFORE U. S. DISTRICT JUDGE RODNEY GILSTRAP  
March 3, 2022**

**OPEN: 09:03 AM**

**ADJOURN: 5:05 PM**

ATTORNEYS FOR PLAINTIFF: See attached

ATTORNEYS FOR DEFENDANT: See attached.

LAW CLERK: Jim Lomeo

COURT REPORTER: Shawn McRoberts, RMR, CRR

COURTROOM DEPUTY: Andrea Brunson, CP

<u>TIME</u>	<u>MINUTES</u>
09:03 AM	Court opened.
09:05AM	Court called for announcements from counsel.

<u>TIME</u>	<u>MINUTES</u>
09:05 AM	Court provided instructions and housekeeping matters to the parties. Case is scheduled for jury selection and trial on Monday, March 21, 2022. Trial will begin following empanelment of jury. Eight jurors will be selected. Peremptory strikes: Four per side. Counsel will be given 30 minutes per side for <i>voir dire</i> . The parties will be given 11-1/2 hours per side for the jury trial portion. Opening will be 30 minutes per side. Closings will be 40 minutes per side. Court to be notified by 10:00 PM each night of disputes/objections not resolved through meet and confer efforts. Three (3) jointly prepared three-ring binders with disputed information are to be submitted to the Court by 7:00 AM the following day. The Court will be available in chambers by 7:30 AM every morning to take up any housekeeping matters or late-arriving disputes that might come up during trial. Deposition-clip objections and/or disputes are to be taken up by the Court the day before the day such deposition is to be used. Court encouraged the parties to utilize the meet and confer process during the course of the trial to resolve disputes. It is the Court's intention to bring the jury in every morning at 8:30 AM. Lunch will be brought in daily for the jurors. Rule 50(a) motions will be heard by the Court after all the evidence is in and Plaintiff rests any rebuttal case. Court will hold an informal charge conference (off the record) after the close of evidence. Formal charge conference will follow thereafter and on the record. Court instructed counsel not to refer to individuals by their first names, and to advise their respective witnesses re: same. Counsel instructed counsel to refer to the Court's Standing Order re: the sealing of the courtroom re: confidential or highly sensitive testimony. Court instructed the parties to follow the instructions from Deputy Clerk in Charge, Mrs. Kecia Clendening re: receipt, review and return of the Juror Questionnaires. Parties to be prepared every morning of trial to read into the record those exhibits used prior day. Twelve juror notebooks to be delivered to chambers no later than 12:00 noon on Wednesday, March 16, 2022. Notebooks to contain: Complete copies of each patent-in-suit (single-sided); claim construction chart (single-sided); page for each witness with a head and shoulder photograph, name and ruled lines for notetaking; three-hole punch notepad for further notes and a non-clicking pen. Each witness page should be tabbed for easy navigation. A reminder that expert witnesses are confined to the four corners of their report.
09:26 AM	Court provided additional instructions and information re: public health protocols and provisions to be implemented during jury selection and trial.
09:39 AM	Court proceeded with hearing argument re: disputed dispositive motions:
09:39 AM	USS's Motion to Dismiss Count XI of Its Amended Complaint Regarding U.S. Patent No. 10,253,493 (Dkt. No. 124).
09:40 AM	Ms. Dickson presented argument for Plaintiff.
09:45 AM	Responsive argument by Ms. Ainsworth for Defendant.
09:49 AM	Court made rulings as set forth in the record.
09:51 AM	Court heard argument re: [SEALED] AKW's Motion for Partial Summary Judgment on Priority for the Roofing System Patents (Dkt. No. 134) and [SEALED] USS's Motion for Summary Judgment Regarding Priority of Certain Asserted Claims (Dkt. No. 137).
09:51 AM	Mr. Wikberg presented argument for Defendant.
10:05 AM	Responsive argument by Mr. Brooks for Plaintiff.

<u>TIME</u>	<u>MINUTES</u>
10:13 AM	Rebuttal argument presented by Mr. Wikberg for Defendant.
10:16 AM	Additional responsive argument by Mr. Brooks for Plaintiff.
10:18 AM	Court DENIED Dkt. No. 134 and Dkt. No. 137.
10:20 AM	Court heard argument re: [SEALED] USS's Motion for Summary Judgment on AKW's Tortious Interference Counterclaim (Dkt. No. 130).
10:20 AM	Ms. Canales presented argument for Plaintiff.
10:27 AM	Responsive argument by Mr. Bernstein for Defendant.
10:35 AM	Rebuttal argument presented by Ms. Canales for Plaintiff.
10:36 AM	Court DENIED-IN-PART and GRANTED-IN-PART Dkt. No. 130.
10:42 AM	Recess.
11:21 AM	Court reconvened.
11:21 AM	Court heard argument re: [SEALED] USS's Motion to Exclude Certain Opinions of AKW's Non-Infringement Expert Dr. Richard Haber (Dkt. No. 126).
11:22 AM	Mr. Brooks presented argument for Plaintiff.
11:28 PM	Responsive argument by Mr. Bernstein for Defendant.
11:33AM	Rebuttal argument presented by Mr. Brooks for Plaintiff.
11:36 AM	Court DENIED Dkt. No. 126.
11:36 AM	Court heard argument re: [SEALED] Defendant's <i>Daubert</i> Motion to Exclude Dr. Jerry Weinstein's Opinions That Rely on His Constructions for the Purported Plain and Ordinary Meaning of "Kaolin Chamotte", "Bright White", and "Substantially Fully Covering" / "Substantially Covering" / "Covering the Top Surface" (Dkt. No. 136).
11:37 AM	Ms. Ta presented argument for Defendant.
11: 42 AM	Responsive argument by Ms. Dickson for Plaintiff.
11:45 AM	Court DENIED Dkt. No. 136.
11:46 AM	Court heard argument re: [SEALED] Defendant's <i>Daubert</i> Motion on Dr. Jerry Weinstein's Expert Report on Alleged Infringement (Dkt. No. 135).
11:47 AM	Ms. Ta presented argument for Defendant.
11:53 AM	Responsive argument by Ms. Dickson for Plaintiff.
12:00 PM	Court GRANTED Dkt. No. 135 with instructions set forth in the record.
12:02 PM	Court heard argument re: [SEALED] USS's <i>Daubert</i> Motion to Exclude Expert Testimony of Dr. Frank Klink Regarding Inventorship and Materiality of Alleged Misrepresentations to the USPTO (Dkt. No. 125).
12:02 PM	Ms. Dickson presented argument for Plaintiff.
12:06 PM	Responsive argument by Mr. Wikberg for Defendant.
12:08 PM	Court DENIED Dkt. No. 125.
12:10 PM	Court heard argument re: [SEALED] USS's Motion to Exclude Certain Opinions of AKW's Damages Expert Brian W. Napper (Dkt. No. 127).
12:10 PM	Mr. Redmon presented argument for Plaintiff.
12:23 PM	Responsive argument by Ms. Greb for Defendant.
12:29 PM	Rebuttal argument presented by Mr. Redmon for Plaintiff.
12:31 PM	Court DENIED Dkt. No. 127.
12:31 PM	Conclusion of argument re: dispositive motions.
12:32 PM	Court directed the parties to meet and confer re: disputed MILS subject to dispositive motion rulings.

<u>TIME</u>	<u>MINUTES</u>
12:33 PM	Recess for lunch.
02:01 PM	Court reconvened.
02:02 PM	Court to take-up MILs.
02:02 PM	MIL agreements reached by the parties.
02:04 PM	Court proceeded to hear argument re: parties' remaining objections to MILs.
02:04 PM	USS's Motions in <i>Limine</i> :
02:04 PM	Plaintiff's MIL 1: Argument presented.
02:11 PM	Court ruling: Plaintiff's MIL 1: DENIED.
02:12 PM	Plaintiff's MIL 2: Agreement.
02:12 PM	Court: GRANTED per agreement.
02:12 PM	Plaintiff's MIL 3: Agreement.
02:13 PM	Court: GRANTED per agreement.
02:13 PM	Plaintiff's MIL 4: Agreement.
02:14 PM	Court: GRANTED by agreement and subject to Court's prior motion rulings.
02:14 PM	Plaintiff's MIL 5: Agreement.
02:15 PM	Court: GRANTED per agreement.
02:15 PM	Plaintiff's MIL 6: Moot subject to Court's previous motion rulings and agreement of the parties.
02:15 PM	Court: GRANTED per agreement.
02:16 PM	Plaintiff's MIL 7: Argument presented.
02:21 PM	Court ruling: Plaintiff's MIL 7: GRANTED-IN-PART and DENIED-IN-PART.
02:24 PM	Plaintiff's MIL 8: Argument presented.
02:27 PM	Court ruling: Plaintiff's MIL 8: DENIED.
02:30 PM	Plaintiff's MIL 9: Argument presented.
02:40 PM	Court ruling: Plaintiff's MIL 9: GRANTED.
02:44 PM	AKW's Motions in <i>Limine</i> :
02:44 PM	Defendant's MIL 1: Agreement.
02:45 PM	Court: GRANTED per agreement.
02:45 PM	Defendant's MIL 2: Argument presented.
02:57 PM	Court ruling: Defendant's MIL 2: GRANTED with instructions set forth in the record.
03:00 PM	Defendant's MIL 3: Argument presented.
03:08 PM	Court ruling: Defendant's MIL 3: DENIED.
03:08 PM	Defendant's MIL 4: Argument presented.
03:14 PM	Court ruling: Defendant's MIL 4: GRANTED with instructions set forth in the record.
03:16 PM	Defendant's MIL 5: Withdrawn.
03:16 PM	Defendant's MIL 6: Agreement

<u>TIME</u>	<u>MINUTES</u>
03:17 PM	Court ruling: Defendant's MIL 6: DENIED as moot.
03:17 PM	Conclusion of argument re: MILs.
03:17 PM	Recess.
04:04 PM	Court reconvened.
04:05 PM	Agreement re: exhibits reached.
04:05 PM	Court began hearing the following arguments re: objections to remaining exhibits.
04:05 PM	AKW's Exhibits:
04:05 PM	Group 22: Argument presented.
04:12 PM	Court: Objection sustained but can be used as demonstratives.
04:12 PM	Group 26: Objection withdrawn.
04:12 PM	Court: Pre-admitted subject to instructions set forth in the record.
04:15 PM	Group 31: Argument presented.
04:29 PM	Court: DTX 308 is pre-admitted; DTX 241 is not pre-admitted but may be used as a demonstrative.
04:30 PM	USS's Exhibits:
04:31 PM	Group 33: Argument presented.
04:49 PM	Court: Pre-admitted subject to instructions set forth in the record.
04:49 PM	Argument presented re: PX 282 of Group 33.
04:55 PM	Court: Pre-admitted subject to instructions set forth in the record.
04:55 PM	Group 36: Objection withdrawn
04:56 PM	Court: Pre-admitted.
04:56 PM	Arguments concluded.
04:56 PM	Pretrial process completed.
05:05 PM	Court adjourned.